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Subject: FNPRM Designated Entity Program (WT Docket No. 05-211)

We have heard disturbing reports that the Commission at this late hour may be considering making radical changes to the designated entity ("DE") program tentatively adopted by the Commission in its *Further Notice of Proposed Rulemaking* released February 3, 2006 ("*FNPRM*"). MetroPCS Communications, Inc. ("MetroPCS") urges the Commission to stay the course and not adopt further unannounced sweeping changes to the DE program that have not been fully vetted for public comment and for which the industry will not have an adequate time prepare.

MetroPCS fully supports the changes to the DE program proposed by the Commission in the *FNPRM*. Frankly though, MetroPCS would rather see the program remain unchanged - - or have it be abandoned altogether - - than have a hastily crafted alternative imposed on short notice with no meaningful opportunity for public comment.

From the outset of this proceeding, MetroPCS consistently has asked the Commission to make sure that any changes to the DE rules be finalized and put in place a sufficient period of time before the auction to enable applicants to do meaningful business planning. Indeed, this is a statutory requirement. Section 309(j) (3)(E) of the Communications Act of 1934, as amended (the "Act"), provides that the Commission in designing auction rules must:

> ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed (i) ** (ii) after issuance of bidding rules, to ensure that interested parties have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services. 47 U.S.C. § 309(j)(3)(E)

In our comments, and in meetings with the Commission staff over the last several months, we urged the Commission to not make any changes to the DE program without giving prospective applicants at least 60 days after the rules became effective before applications would be due in order to allow them time to plan their participation, line up financing, and the like. We also indicated that we felt that the Commission could make these changes and remain on schedule if it did not depart from the proposal in the *FNPRM* because prospective applicants already had adequate notice regarding the changes the Commission tentatively adopted in the

FNPRM. Were the Commission to adopt dramatically different changes to the program, such as those that may be circulating, and try to maintain the currently proposed auction schedule, parties adverse to the changes would have a valid basis and incentive to appeal the decision and thereby stop or postpone the auction. The Commission should not jeopardize so important an auction by making significant, unannounced last minute changes to the DE program, particularly when the changes under consideration have not been properly noticed to and commented on by interested parties. Moreover, any such radical departure from the current proposed rules will chill participation in the auction by the exact persons whom the Section 309(j)(3)(E) of the Act was intended to help. This would not be good public policy.

MetroPCS supported the restriction on investments in DEs by the nationwide carriers because of the extent to which licenses have become concentrated in the hands of a few national carriers, and because DEs backed by large national players do not represent new market entrants in any meaningful sense. But, if the $5 billion threshold were to be dropped to a lower number which swept in regional carriers such as MetroPCS, the result clearly would be contrary to the public interest. *Bona fide* non-controlling investments in very small business DEs by mid-tier wireless carriers provide a pro-competitive mechanism for these carriers to stretch their limited capital and help bring needed competition to the wireless marketplace. Allowing mid-tier carriers to invest in DEs, subject of course to applicable control requirements, strikes an appropriate balance because it enables very small businesses to attract both capital and gain access to wireless operating expertise.

Seeking material arrangements and financing from existing regional carriers is one of the best bets for these new entrants to participate in the wireless industry. Participation by these carriers gives the DEs access to capital, expertise, roaming and, most importantly, buying power that allows DEs to be serious competitors to the existing carriers. Prohibiting transactions of this nature will seriously undermine the DE program and frustrate the statutory objective of fostering spectrum-based opportunities for designated entities. Moreover, the Commission would hamstring any DE who won a license from succeeding in the wireless industry. The Commission should want a DE program that not only creates meaningful opportunities for small business and entrepreneurs, but also gives them the tools to construct and operate their markets. Radical last minute changes to the DE program will chill participation in the auction by small businesses and entrepreneurs.

Similarly, it would be disastrous for the Commission to adopt artificial restrictions on the extent to which a mid-tier carrier could provide debt or equity capital to a DE in which the carrier had a non-controlling investment. The Commission wisely moved away from the "25 Percent Equity Exemption" (FCC rule section 24.709(b)(1)(iii)) and the "49.9 Percent Equity Exemption" (FCC Rule

24.709(b)(1)(iv)) that used to dictate DE structures because the agency realized that very small business licensees needed more flexibility to establish capital structures that could survive in the real world. *Business capital structures should not be predetermined by regulatory fiat* which is what would happen if the Commission placed an arbitrary limit on the amount of capital that a non-eligible could invest in and/or loan to a DE. Since the Commission's application processing staff routinely scrutinizes investment and loan documents to assure that the qualified very small business controlling interests of a DE are not relinquishing *de facto* or *de jure* control, there is no public interest reason to adopt artificial restrictions of this nature. We are concerned that any rule which limits investment by small and medium size carriers in DEs would represent a return to the past when the Commission did not foster successful participation in the DE program by small businesses and entrepreneurs because the business structures were not sustainable in the market.

For example, if the Commission were to limit the amount of money that a medium sized carrier could loan to a very small business DE, the enterprise could be doomed to failure because the financial community would not likely consider the remainder of the business to be bankable on a stand-alone basis. The only DEs that would be able to get funded under these circumstances would be the ones backed by the largest national carriers with strong enough balance sheets to give comfort to lenders. These are the very carriers that the Commission already tentatively concluded should not be beneficiaries of the DE program. Such a result truly would stand the DE program on its head. The result would be a further concentration of licenses in the hands of a few rather than the fostering of new competition by new entrants.

In sum, MetroPCS urges the Commission to avoid adopting changes to the DE program that have not been fully vetted in public comments and could have serious adverse unintended consequences. Rational business planning cannot occur, particularly by DEs which must borrow funds to participate in any meaningful way in an auction, if the Commission is imposing surprising new material restrictions on investments in DEs on the eve of the auction. The result will be confusion, litigation, delay and, ultimately, market failures. MetroPCS urges the Commission not to take that perilous path.

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A copy of this email is being filed in WT Docket 05-211 as required by the Commission's rules.